

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Tony L. Hammond; and  
Nanci E. Langley

Rules Applicable to Appeals of Post Office Closings

Docket No. RM2011-13

SUPPLEMENTAL NOTICE REGARDING  
PROPOSED RULES GOVERNING APPEALS

(Issued August 25, 2011)

On August 18, 2011, the Commission issued Order No. 814 proposing to amend rules governing appeals of Postal Service final determinations to close or consolidate post offices.<sup>1</sup> One of the purposes of the proposed rules is to streamline the appeals process. Upon further consideration, the Commission believes that further streamlining is possible by eliminating the current requirement that notice of each appeal filed with the Commission be published in the *Federal Register*. Publication of such notice in the *Federal Register* is not required by statute or the Constitution. Accordingly, the Commission proposes to amend 39 CFR 3001.17.<sup>2</sup> Comments on the amendment to

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<sup>1</sup> Notice of Proposed Rulemaking Regarding Appeals of Postal Service Determinations to Close or Consolidate Post Offices, August 18, 2011 (Order No. 814).

<sup>2</sup> As noted below, the Commission also proposes several conforming changes to rule 3001.17 to remove outdated provisions and one change to rule 3001.10(b).

rule 17 are due October 3, 2011 (the same date comments are due pursuant to Order No. 814).

Appeals of Postal Service determinations to close or consolidate a post office are limited to persons served by that post office. 39 U.S.C. 404(d)(5). Postal Service determinations to close or consolidate a post office must be in writing and must be made available to persons served by such office. 39 U.S.C. 404(d)(3). Such determinations should apprise affected persons of their right to appeal the decision to the Commission within 30 days of its being made available to such persons.

Under its current rules, upon receipt of an appeal the Commission's practice has been to notify the Postal Service of the filing and to issue an order docketing the appeal, appointing a Public Representative, and establishing a procedural schedule governing submission of the underlying record and briefs in the proceeding. Pursuant to 39 CFR 3001.17(c), the Commission also directed that its order be published in the *Federal Register*. The Commission has determined that publication of its order in the *Federal Register* is unnecessary. It, therefore, proposes to eliminate that requirement.

Under the Administrative Procedure Act, Pub. L. 79-404, 60 Stat. 237, 1946 (APA), "adjudication" means agency process for formulation of an order." 5 U.S.C. 551(7). Appeals initiated under section 404(d) are not formal adjudications under the APA (5 U.S.C. 554) because, pursuant to section 404(d)(5)(C), the provisions of 5 U.S.C. 556 and 557 do not apply to post office appeal proceedings.

Instead, appeals of post office closings are a form of informal adjudication.<sup>3</sup> The Commission is not required by section 404(d) or any other statutory provision to publish in the *Federal Register* notice that a post office appeal has been filed with it. As with all

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<sup>3</sup>"Informal adjudications are not covered by the APA at all, generally do not involve a hearing, and are subject to the specific enabling statute of each agency." James T. O'Reilly, *Administrative Rulemaking: Structuring, Opposing, and Defending Federal Agency Regulations* 621 (2d ed. 2011).

its orders, the Commission does publish orders issued in post office appeal proceedings on its website and, if needed, mails a copy of it to parties without access to the Commission's website. Moreover, both the Commission's and the Postal Service's rules require that documents relating to an appeal be displayed at a post office to be closed.<sup>4</sup> Such postings also serve to apprise persons served by such post office that an appeal has been initiated.

Accordingly, the Commission proposes to amend rule 3001.17 to eliminate the requirement that notice of each post office appeal be published in the *Federal Register*. In addition, the Commission proposes several housekeeping changes to that rule to delete outdated provisions.

- Remove subparagraphs (a)(1) and (2) and redesignate subparagraphs (a)(3), (4), and (5) as (a)(1), (2), and (3), respectively;
- Revise redesignated subparagraph (a)(2) by changing "subpart E of this part" to "part 3030 of this chapter";
- Revise redesignated subparagraph (a)(3) by changing "to institute any other proceeding under the Act." to "it is appropriate.";
- Remove paragraph (b) and redesignate paragraphs (c) and (d) as (b) and (c), respectively;
- Revise redesignated paragraph (b) by inserting "and" after "on the Postal Service," and by striking ", and the appellant in the appeal of a Postal Service determination to close or consolidate a post office";
- Revise redesignated subparagraph (c)(1) by changing "paragraphs (a) and (b)" to "paragraph (a)"; and
- Revise redesignated subparagraph (c)(3) by inserting "and" after "nature of postal services;" and by striking "or, in the case of an appeal, an identification

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<sup>4</sup> See 39 CFR 241.3(g)(3)(ii) and 3001.117.

of the appellant and a summarization of the Postal Service determination to close or consolidate under review”.

Lastly, in Order No. 814, the Commission proposed to allow participants in appeal proceedings (other than the Postal Service) to file hard copy documents thereby eliminating the need for participants to request a waiver of the Commission’s online filing requirements. See Order No. 814 at 2, 13. This change is reflected in proposed revisions to rules 3001.9(a) and 10(d). To conform to the proposed changes and to eliminate an outdated reference, the Commission proposes the following change to rule 3001.10(b):

- Revise redesignated paragraph (b) by removing “Participants in proceedings conducted under subpart H who are unable to comply with these requirements may seek to have them waived.”

*It is ordered:*

1. Comments on the amendments to 39 CFR 3001.17 and 3001.10(b) specified in the body of this Order are due October 3, 2011.
2. The Secretary shall arrange for publication of this Notice in the *Federal Register*.

Shoshana M. Grove  
Secretary